

1 UNITED STATES DISTRICT COURT

2 Northern District of California

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4 ESTRELLITA CRUZ

No. C 12-05320 MEJ

5 Plaintiff(s),

6 v.

7 MACY&#039;S WEST STORES, INC.

**ORDER DENYING AS MOOT  
DEFENDANT'S MOTION TO  
DISMISS**

8 Defendant(s).  
9 \_\_\_\_\_/

10 Pending before the Court is Defendant's Motion to Dismiss. Dkt. No. 3. However, on  
11 November 8, 2012, Plaintiff filed an Amended Complaint. Dkt. No. 4. Under Federal Rule of Civil  
12 Procedure 15, a party may amend its pleading once "as a matter of course" within "21 days after  
13 service of a responsive pleading or 21 days after service of a motion. Fed. R. Civ. P. 15(a)(1).  
14 Thus, as no prior amended complaints have been filed, Plaintiff was entitled to file an amended  
15 complaint as a matter of course under Rule 15(a). The amended complaint supersedes the original  
16 complaint, which is treated as non-existent. Since Defendant's motion is based on Plaintiff's  
17 original complaint, the Court hereby DENIES Defendant's motion as moot. Defendant shall file an  
18 answer or other responsive pleading within 21 days from the date of this Order.

19 Plaintiff is advised that no further amendments may be made without seeking leave of Court  
20 pursuant to Rule 15 and Civil Local Rule 7. Any attempt to file an amended complaint without  
21 proper notice to Defendant under Civil Local Rule 7 and a court order shall be stricken.

22 **IT IS SO ORDERED.**

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24 Dated: November 13, 2012

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Maria-Elena James  
Chief United States Magistrate Judge